

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B5

DATE: NOV 15 2012 OFFICE: NEBRASKA SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)


ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

In order to properly file an appeal, the United States Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

The record indicates that the director issued the decision on Wednesday, May 30, 2012. The director properly notified the petitioner that he had 33 days to file the appeal. The petitioner mailed the appeal on June 28, 2012, and the director received it on Tuesday, July 3, 2012, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. The director forwarded the matter to the AAO. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the AAO must reject the appeal.

The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, USCIS must treat the appeal be treated as a motion, and a decision must be made on the merits of the case. The untimely appeal, in this instance, does not meet the requirements of a motion. If the appeal had been timely filed, the AAO would have summarily dismissed the appeal under the regulation at 8 C.F.R. § 103.3(a)(1)(v), which states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

The only claim the petitioner makes on appeal is that he has received a job offer to teach French language classes as an adjunct faculty member at the [REDACTED]. This assertion is not relevant to the director’s stated ground for denial, which concerned the petitioner’s eligibility for a waiver, in the national interest, of the statutory job offer requirement at section 203(b)(2)(A) of the Act.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).


Page 3

Here, the untimely appeal fails to meet the requirements of a motion to reopen or to reconsider because it adds no new information or evidence that is relevant to the denial of the petition. Therefore, neither the AAO nor USCIS will consider the untimely appeal as a motion.

ORDER: The appeal is rejected.